

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: July 7, 1997

TO: Dorothy L. Moore-Duncan, Regional Director, Region 4

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Delaware Spirits and Wine, Inc. t/a Liquor World, Case 4-CA-25875

This case was submitted for advice as to whether the Employer, a tenant in a strip shopping mall, had a property interest sufficient to allow it to exclude Union handbillers from the parking lot and sidewalks of a shopping center in the absence of controlling State law; and whether the Employer's lease gave it the right to exclude Union handbillers when the Employer sought to enforce its landlord's "no solicitation" policy.

We conclude that the Charge should be dismissed, absent withdrawal, for the following reasons. By letter dated August 28, Bellevue Realty, on behalf of Northtowne Plaza, the property owner, notified the Union that it was prohibited from, inter alia, distributing handbills on shopping center property when the handbills are not directly related to doing business with its tenants. Also on August 28, the attorney for the owner of Liquor World, the handbilled tenant-Employer, notified the Union that:

Liquor World's landlords in each location⁽¹⁾ have advised us that solicitation, loitering, distributing pamphlets, informational picketing and any other uses of shopping center property not directly related to doing business with tenants of the shopping center are strictly prohibited. Our landlords have further advised that they will consider your men to be trespassing if they attempt to distribute handbills on shopping center property, and will act accordingly, including summoning the police. Liquor World has long term leases at both locations, and wants to maintain good relations with its landlords. Liquor World will do what it can to comply with our landlords' stated policy. We hope that you will honor that policy, as well.

Thus, when Liquor World told the Union handbillers that they could not distribute literature in front of its store in the Northtowne Plaza, in a common area, because the landlord prohibited it, Liquor World was acting as an agent of the landlord.⁽²⁾ Liquor World was not asserting its own property right, but that of the landlord.⁽³⁾ Unlike the facts in Bristol Farms, supra, Delaware does not restrict the rights of property owners in shopping centers. Thus, even though the Employer-lessee may not itself have had a sufficient property right to exclude the Union from handbilling in the common areas, the facts clearly demonstrate that it did so as agent of the property owner landlord.

B.J.K.

¹ Northtowne Plaza Shopping Center and Milltown Plaza Shopping Center.

² "In determining whether a person is acting as the agent of another, the Board applies the common law principles of agency as set forth in the Reinstatement 2d of Agency. [citations omitted] Thus, agency may be established, inter alia, under the doctrine of apparent authority, when the principal's manifestations to a third party supply a reasonable basis for the third party to believe that the principal has authorized the alleged agent to do the acts in questions." *Allegany Aggregates, Inc.*, 311 NLRB 1165 (1993).

³ Cf. *Bristol Farms*, 311 NLRB 437, 439 (1993) (Board applied California law in concluding that lessee did not have the right to exclude union agents from the sidewalk in front of its grocery store and would not have possessed such a right even if it had possessed a complete ownership of that sidewalk); *O'Neil's Markets, d/b/a Food for Less*, 318 NLRB 646, enfd. in relevant part, 95 F.3d 733 (8th Cir. 1996)(Lessee did not possess sufficient property right to exclude union from shopping mall in circumstances where there was no evidence that mall owner sought the union's removal.)